

May 2, 2006

California Low-Income Health Advocate Alert On Medicare Part D

More information on Medicare Part D, including past Alerts, can be found at the www.nsclc.org website, and at www.cahealthadvocates.org/cmc/index.html.

Lawsuit Filed by NSCLC, CMA

National Senior Citizens Law Center (NSCLC) and the Center for Medicare Advocacy, Inc. (CMA) filed a class action lawsuit on behalf of dual eligibles in California and across the country on April 26, 2006. The suit requests that the federal government 1) promptly enroll dual eligibles not assigned to a plan and inform plans; 2) disenroll and enroll dual eligibles on a prompt and efficient basis, and notify the appropriate plans; 3) inform plans promptly and efficiently regarding Low-Income Subsidy status; 4) refrain from reducing Social Security checks for Part D premiums for dual eligibles and not allow plans to bill dual eligibles; and 5) take all steps necessary to ensure that dual eligibles receive the full benefits of Medicare Part D and the LIS to which they are entitled. Copies of the press release, complaint and motion for class certification may be found at www.nsclc.org.

Clients for the class action suit are needed: CMS continues to assert that Part D problems have been resolved, while advocates continue to see problems on a widespread basis. Please help us identify dual eligible clients with any of the following current issues: 1) on the wrong plan (plan differs from what they chose and enrolled in); 2) on more than one plan; 3) not on a plan at all; 4) not correctly receiving the LIS. Even if you believe your client's issue will be resolved in short order with advocacy assistance, please contact NSCLC with any clients who are willing to help others by assisting in the case.

State Update

Emergency Coverage Continues Through 5/16/06

The state-funded emergency drug coverage for dual eligibles having difficulty obtaining their drugs through Part D was extended with passage of SB1233, signed by Governor Schwarzenegger on February 9, 2006. The Governor has used his discretion under the bill to extend this emergency coverage through May 16, 2006. The bill does not authorize the Governor to extend the emergency coverage beyond May 16, 2006, but advocates continue to hope that a new bill will be passed with further extensions.

Emergency drug benefits are only available when:

- a claim submitted to a Part D plan by the pharmacy has been denied payment for reasons other than processing errors or omissions made by the pharmacy, lack of medical necessity or health and safety reasons;
- the pharmacy is unable to submit a claim solely due to unavailable or incomplete Part D enrollment information (including through the E1 eligibility transaction and information from CMS, CMS contractors and Part D plans); or
- The Part D plan provides information that the dual eligible's deductible or co-payment amount is higher than the \$1 to \$5 range under the Low Income Subsidy (LIS).

For the latest Medi-Cal provider bulletin with detailed instructions (dated April 14, 2006), see the Medi-Cal website at www.medi-cal.ca.gov

DHS Statistics

DHS has announced that as of midnight, April 27, the state has spent approximately \$59.5 million on approximately 900,000 claims, assisting over 234,000 beneficiaries. The Centers for Medicare and Medicaid Services (CMS) has indicated that it will reimburse the state for costs incurred between the start of the emergency program in January through the end of March 2006. According to the results of a DHS survey of the top 100 pharmacies utilizing the state emergency system, 35% of emergency claims (10% of dollars spent) are for Part D excluded drugs, which can be billed to Medi-Cal but not through the emergency system. DHS also stated that a high percentage of the claims processed (as much as 70%) could have been billed to Medicare and paid for by plans if the system worked properly.

Advocacy for California Part D Safety Net

Part D advocates across the state continue to press for the state of California to provide a permanent safety net for dual eligibles. Advocates statewide are calling for a safety net that would include the following:

- Maintenance of safety net coverage
- Medi-Cal as payor of last resort for dual eligibles
- Coverage of new duals until Part D plan coverage actually starts
- Coverage of duals who are charged incorrect co-payments, and
- Coverage of duals who unexpectedly lose coverage if a plan withdraws from the market
- Help with cost burdens
- Coverage of co-payments
- Coverage of enhanced premiums for higher cost plans that provide greater coverage (and cost-savings to Medi-Cal)

For more information on California advocacy efforts, contact: David, Jeanne or Katharine (see below), or Angela Gilliard or Kim Lewis at the Western Center on Law and Poverty.

New Dual Eligibles

DHS has confirmed that over 64,000 individuals who became newly dually eligible (newly eligible for Medicare and already on Medi-Cal) from November 15, 2005 to mid-March, 2006 will receive Medi-Cal prescription drug coverage termination notices mailed on April 20. These notices are translated

into 12 languages. DHS delayed sending these notices because they were not notified by CMS to make changes to the computer system earlier. Notices for those eligible after mid-March have not been scheduled yet; some time in the next few months, these notices will begin to be sent on a monthly basis as individuals become newly dually eligible.

Federal Update

Formulary Protections for Existing Drugs

CMS announced in guidance on April 27, 2006 that a Medicare Part D plan may not discontinue or reduce coverage of a prescription drug that is in current use by a beneficiary, except in very limited cases. During a plan year, Part D plans may expand formularies and may make maintenance changes (e.g., replacing a brand-name drug with a new generic drug or changing formularies because of drug safety or effectiveness with approval and 60 days' notice). However, as a result of this new guidance, plans removing Part D drugs from their formularies (with approval and notice, except where the FDA or product manufacturer has removed the drug from the market) must exempt beneficiaries currently taking the prescription drug. This change is in effect for 2006 and subsequent years. The guidance is in an April 27, 2006 letter to Part D sponsors titled "Formulary Changes During the Plan Year," available at <http://www.healthassistancepartnership.org/assets/pdfs/CMS-formulary-guidance.pdf>.

Facilitated Enrollment Notices Mailed; Timeline Changes

CMS has provided "facilitated enrollment" for individuals eligible for the Low Income Subsidy who were not full-benefit dual eligibles. CMS sent out auto-enrollment letters to this population in March, giving them until April 30 to voluntarily enroll in a plan. Auto-assignments are effective May 1, 2006, instead of June 1, 2006 as earlier planned.

A copy of the notice to full benefit dual eligibles and the notice sent to partial dual eligibles are available at: <http://www.cms.hhs.gov/States/Downloads/NoticesofFacilitatedEnrollment.zip>

Guidance to the plans about facilitated enrollment may be found at: <http://www.cms.hhs.gov/States/Downloads/AutonFacilitatedGuidances.zip>

Other Changes to Enrollment of Dual Eligibles:

In recent guidance, CMS also changed the timing of auto-enrollment for full-benefit dual eligibles who were first on Medicare and then become eligible for Medi-Cal. The effective date of auto-enrollment for these beneficiaries will be the first date of the month of Medicaid eligibility or January 1, 2006, whichever is earlier. This is a change from earlier guidance that would have created a gap in enrollment for these individuals (whether they waited for auto-enrollment to take effect or chose a specific plan).

Full-benefit dual eligibles previously in a Part D plan who disenroll and fail to enroll in a new plan have effective auto-enrollment on the first day of the month after disenrollment. This is also a change to previous guidance. This has been causing problems for some dual eligibles who declined Part D

auto-enrollment because they already have creditable coverage (e.g. CalPERS) but find themselves re-enrolled, sometimes repeatedly. If you encounter this problem, contact CMS Region IX staff.

For more information on both of these changes, see <http://www.cms.hhs.gov/States/Downloads/AutonFacilitatedGuidances.zip>.

Note: Full-benefit dual eligibles who are Medi-Cal eligible first and then become eligible for Medicare will be generally have Part D coverage as of the first day of the month they become eligible for Part D (usually the first day they are eligible for Medicare, but not retroactively). For Californians eligible for Medicare since November 15, 2005, however, this enrollment has been delayed. See discussion above.

Transition Coverage by Part D Plans

CMS guidance has clarified that all Part D plans are to have transition policies in place to assist individuals already on medications that are not covered by the Part D plan. The purpose of transition policies is to allow individuals to have sufficient time and guidance to switch to a formulary drug or to request a formulary exception. Advocates have noted that few individuals seem to get access to transition coverage. Stories of successful or unsuccessful transition coverage may be sent to Jeanne Finberg, David Lipschutz, or Katharine Hsiao (see below).

For transitioning individuals, including all dual eligibles enrolled by March 1: All Part D plans were expected to provide transition coverage, ending March 31, 2006. This deadline is extendable on a “case by case” basis if an exception request or appeal has not been approved.

For new enrollees after March 1, 2006: A 30-day transition period applies.

For individuals in long-term care: CMS suggests 90 to 180 days for those with multiple medications; plans must also cover a temporary supply of drugs during exception processes

Extensions: CMS has urged that transitions be extended on a “case-by-case” basis to allow for transition to a formulary drug, while an exception request is being processed.

Special Enrollment Period for those on LIS

CMS created a new Special Enrollment Period (SEP) for individuals who receive the Low Income Subsidy (“Extra Help”) after May 15, 2006. This gives these individuals one extra chance to enroll in a Part D plan, even if they delay beyond the general May 15 enrollment period. However, CMS did not provide for any waiver of the penalty premium for LIS individuals after May 15 (note that the LIS will, however, pay up to 80% of the premium penalty for eligible beneficiaries). For more information, see <http://www.cms.hhs.gov/States/>.

Caution: this new SEP is being interpreted by some as being an extension of the upcoming May 15, 2006 deadline; this SEP only applies to those who apply for and are found eligible for the LIS – it will not benefit any Medicare beneficiary who is not found eligible for the LIS.

Note: Dual eligibles and those on Medicare Savings Programs (QMB, SLMP, QI-1) may change plans once per month throughout the year.

Co-Payments for Institutionalized Individuals

CMS released brief guidance entitled “Part D Questions re: Co-Pays for Institutionalized Individuals” on April 19, 2006. In this guidance CMS clarifies that Part D “institutionalized individuals” with a zero co-pay are those full-benefit dual eligibles who are inpatients in a medical institution or nursing facility for which payment is made under Medicaid throughout a calendar month. In the partial first month of admission (any time that an individual is admitted after the first of the month) an individual is not considered institutionalized for Part D. The first day of the following month, if expected to stay the entire month, the co-pay may be assumed to be zero. Institutional status is not interrupted by transfers between institutions or bed hold days; institutional status ends when an individual is discharged to the community or to assisted living.

The guidance further clarifies that in a month when co-payments are charged to the resident, these co-pays are treated as a deduction from income in calculating the individual’s share of the cost of institutionalized care, leaving the individual money to satisfy his/her co-payments. For more information on co-payments for institutionalized individuals, see www.cms.hhs.gov (to be posted shortly).

Statistics from CMS and SSA

CMS recently released statistics showing Medicare Part D plan enrollment (PDP and MA-PDP plans) by state: California has 1.246 million individuals in Part D stand-alone plans and 980,300 in Medicare Advantage Part D plans. County enrollment is also available at: http://www.cms.hhs.gov/PrescriptionDrugCovGenIn/02_EnrollmentData.asp.

SSA statistics on the Low Income Subsidy are also available showing that 262,776 Californians applied for the LIS and 38.8% were found eligible as of March 31, 2006. See <http://www.ssa.gov/legislation/statealphasmallfont.html>.

Language Access Update

A group of advocates across the state has met several times to discuss the additional onerous burdens individuals with Limited English Proficiency (LEP) face in accessing Part D prescription drugs. The group has begun to create talking points on language access issues, and will survey LIS plans regarding language accessibility. For more information, contact Katharine Hsiao, Jeanne Finberg, Randy Boyle or Doreena Wong at the National Health Law Program, or Sonal Ambegaokar from the National Immigration Law Center

Tools to Assist with Coverage Determinations, Exceptions and Appeals

42 U.S.C. §§1395w-104(g), (h)

42 C.F.R. §§ 423.560 – 423.638

CMS Prescription Drug Benefit Manual, Chapter 18: Enrollee Grievances, Coverage Determinations, and Appeals:

http://www.cms.hhs.gov/prescriptiondrugcovcontra/downloads/partdmanualappeals_11.30.05.pdf

NSCLC summary of the above: http://www.nsclc.org/news/06/01/partd_coveragememo.pdf

Part D Reconsideration Manual: Maximus:

<http://www.medicarepartdappeals.com/PartDReconsiderationManual.pdf>

Pharmacy Notice (plans should be requiring all pharmacies to post this notice; available in English and Spanish):

http://www.cms.hhs.gov/prescriptiondrugcovcontra/06_RxContracting_Enrollmentappeals.asp#topofpage

Model Denial Notice:

http://www.cms.hhs.gov/prescriptiondrugcovcontra/06_RxContracting_Enrollmentappeals.asp#topofpage

Model Part D Exceptions/Coverage Determination Request Form

CMS has just released a Model Part D Coverage Determination Request Form that was developed by the American Medical Association, American's Health Insurance Plans and CMS, with input from the Center for Medicare Advocacy and the ABA Commission on Law and Aging. The form can be used for coverage determinations, including exceptions and prior authorization requests, and can be found at: http://www.cms.hhs.gov/MLNProducts/Downloads/Form_Exceptions_final.pdf . The form previously distributed by CMS is here:

<http://www.cms.hhs.gov/PrescriptionDrugCovGenIn/downloads/ModelCoverageDeterminationRequestForm.pdf>.

Note that Part D plans are not required to accept or use this model form.

Request for Prescription Information or Change Form

A doctor/prescriber – pharmacist communication form called “Request for Prescription Information or Change” has been developed by the American Medical Association, the American Pharmacists Association, the Center for Medicare Advocacy and others, and can be found at:

<http://www.cms.hhs.gov/PrescriptionDrugCovGenIn/Downloads/PartDPharmacyFaxForm.pdf>

As above, Part D plans are not required to accept or use this model form.

Appointment of Representative Form

<http://www.cms.hhs.gov/cmsforms/downloads/cms1696.pdf>

Where to complain:

If your client has had trouble with Medicare Part D, in addition to any exceptions, appeals or coverage determinations requests, you may wish to:

- a. Complain to CMS – Central Office: priit@cms.hhs.gov; and to Region IX Office at rosfodbc@cms.hhs.gov and to the CMS Central Office at
- b. Report your story to NSCLC and CHA

- c. If your client has had a problem with the following and is a dual eligible, see if s/he would like to be a plaintiff in the class action lawsuit: 1) not on a plan, 2) on more than one plan, 3) on the wrong plan, 4) not getting LIS. Send information to ntk@nslc.org

Keep Those Stories Coming

The adverse publicity regarding the problems that dual eligibles are facing is helping to get the changes we need at the state and federal levels. California's current bail out will last, at most, until May 16, 2006. We need to keep our client stories in the press to get more permanent relief and we need plaintiffs for our dual eligibles lawsuit. Please help us by identifying clients or their family members who are willing and able to talk to the press, or willing to be named plaintiffs. Send stories and contacts to jfinberg@nslc.org, khsiao@nslc.org or oakland@nslc.org. An optional form is available at: http://www.nslc.org/news/06/partd_stories2_.pdf.

More information about Medicare Part D is posted on www.calmedicare.org, and on the main page and California page of the NSCLC website, which you can view at www.nslc.org. We will continually post new training materials as this program develops. Other helpful websites: Center for Medicare Advocacy at www.medicareadvocacy.org; Health Consumer Alliance at www.healthconsumer.org; Families USA at www.familiesusa.org; Medicare Rights Center at www.medicarerights.org; California Health Advocates at www.cahealthadvocates.org; California HealthCare Foundation at www.chcf.org/topics/healthinsurance/drugbenefit; Health Assistance Partnership at www.healthassistancepartnership.org; and Kaiser Family Foundation at www.kff.org/medicare.

For more information, e-mail NSCLC or CHA:

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